

STATE PRESERVATION BOARD
INVITATION FOR BIDS #809-18-0223
INTERIOR PAINTING SERVICES

February 6, 2018

DATE ISSUED

INFORMATION TO BIDDERS

AGENCY TO INVOICE

STATE PRESERVATION BOARD
P.O. BOX 13286
AUSTIN, TEXAS 78711
TSPB.accounting@tspb.texas.gov

LOCATION OF SERVICES

TEXAS CAPITOL & CAPITOL EXTENSION
1100 CONGRESS AVE.
AUSTIN, TX 78701

Bid Opening Time: **2:00PM Central Time, February 23, 2018.**

ATTACHED BID FORM MUST BE FILLED OUT AND SIGNED. RETURN BIDS BY 2:00 P.M. CT, February 23, 2018 TO:

Via Email: SPB.Bids@tspb.texas.gov OR

OR via US mail to: State Preservation Board
Attn: Purchasing
P.O. Box 13286
Austin, TX 78711

OR Via Hand Delivery to: State Preservation Board
(Mon-Fri, 8AM-5PM) Attn: Purchasing
Closed for lunch 12-1 201 E. 14th St., Ste. 950
Austin, TX 78701

*If emailing bid, the email subject line must contain the IFB number and title as indicated on this IFB. **It is recommended that Bidders begin the email process at least 24 hours in advance of the due date/time since most large attachments are quarantined and delayed for security scanning. The State shall not be responsible for failure of electronic equipment or operator error. SPB takes no responsibility for electronic Proposals that are captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination email box by the due date/time by any SPB anti-virus or other security software. All bids received via email will be acknowledged. If no confirmation is received, contact the SPB Purchasing Dept. at 512-463-5495 to confirm receipt of bid.***

The bidder shall assume full responsibility for timely delivery at the location designated for the receipt. If mailing or hand delivering bid, please show bid opening date and the IFB number on the bid envelope and show return address of firm. By signing the Bid Form, Bidder agrees to comply with all conditions of the bid. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered. Bids must be time stamped at the State Preservation Board by the hour and date specified for receipt of bid. The official bid clock in the State Preservation Board reception area is the sole determiner of the time of day.

Questions: All questions pertaining to this IFB may be directed to SPB.Bids@tspb.texas.gov and must be received by **5PM, CT, February 20, 2018**. Responses to inquiries which directly affect an interpretation or change to this IFB shall be issued in writing by addendum. Bidders are responsible for checking the agency website <http://www.tspb.state.tx.us/spb/procure/procure.html> or the Electronic State Business Daily <http://www.txsmartbuy.com/sp> for the issuance of any addendum. All such addenda issued by SPB prior to the time that bids are received shall be considered part of the IFB, and the Bidder shall consider and acknowledge receipt of such in their response. Only those SPB replies to inquiries which are made by formal written addenda shall be binding. Oral and other interpretations or clarification shall be without legal effect.

Optional Project Site-Visit: Interested bidders may contact Bob Cash, SPB Director of Facilities at (512) 463-5390 to arrange a project walk-through and site visit. Project walk-throughs are optional and will be provided by appointment to interested bidders between February 15 and February 20, 2018.

Bid Award: The State Preservation Board (SPB) will award the project based on the lowest qualified bid. More than one bidder may be awarded the project. The project will only be awarded to vendors who have experience with the type of services specified and who can submit references of previous similar work acceptable to the SPB. The SPB reserves the right to reject a bid if references or the ability to provide services cannot be verified or if a reference is unacceptable to the SPB.

Public Bid Opening Time: 2PM, February 23, 2018, at the Offices of the State Preservation Board, 201 E. 14th Street, Ste. 950, Austin, TX 78701.

CONTRACTOR REQUIREMENTS

Minimum Qualifications: Bidders must provide a list of three (3) references where services comparable in size and scope have been performed. Bidder must list contact name and telephone number for each reference. The State Preservation Board will contact these references to verify bidder's ability to perform these services. The SPB must be able to verify that the bidder has the expertise and experience to successfully complete a project of this size and scope. The SPB reserves the right to reject a bid if references cannot be verified or if a reference is unacceptable to the SPB.

Proposed Project Staff: Bidders must provide a proposed staffing list including the name of the foreman and years of experience in commercial painting and supervision; and the names of painters staffing the job and their years of commercial painting experience and any experience in plaster repair.

Subcontracting: No portion of the contract shall be subcontracted. All work must be performed with Contractor's employees.

Criminal Background Checks Required: All contractor employees must provide a valid Texas driver's license or other form of picture identification to the Capitol Police, Texas Department of Public Safety, for a criminal background check prior to starting work and obtain contractor badges when working on site.

PROJECT SCOPE OF WORK

This project consists of painting offices in the Texas Capitol and Capitol Extension on an as-needed basis. While the majority of the work will be completed during normal business hours, some work must be completed on weekends and after normal business hours. All Capitol Extension offices that will be receiving new carpet will be painted late February 2018 through April 1, 2018. Additional offices may be added to this group pending availability. Capitol and Capitol Extension office make-ready painting will take place between July 1, 2018 and December 8, 2018. This work will be scheduled in advance and will require a pre-painting walkthrough for each set of offices the week before work starts.

Contractor must be able to provide personnel to staff the job daily based on a mutually agreed upon schedule, with a competent foreman or superintendent to be on the job at all times. Foreman or superintendent must be able to communicate with SPB managers and SPB lead painter, as well as the paint contractor employees. No sub-contractors may be used on the project. Contractor must show documentation of recent and previous experience in plaster repair within the last two years and be prepared to staff the job with experienced plaster repair and painting personnel. The Capitol and Capitol Extension are occupied office buildings. Smoking, inappropriate or loud language, and inappropriate clothing is not permitted while on the premises. All masking tape and film must be pulled off, bagged with other trash, and disposed of at the end of each day. Contractor must have flat bed dollies in good working order to transport materials. **Contractor must be able to provide at least seven qualified employees for the work, however, the SPB**

cannot guarantee all seven will be needed at all times.

Capitol:

All painting in the Capitol will be done with advanced alkyd paint. The historic plaster may have peeling in some areas. If peeling is present the Contractor must scrape, fill any holes, and caulk where needed at walls and woodwork. Wet sanding and priming is required on any areas that are scraped or have holes filled.

Contractor shall use the following materials (supplied by SPB):

- Glidden Professional, Lifemaster Oil, Int/Ext Eggshell, # 1502-0110, (wall paint)
- Glidden professional, Ultra-Hide 150, Interior Flat, #1210-0110V, (ceiling paint)
- Zinsser, Oil-base stain blocker # 03951, (primer)
- Proform, Quickset Lite 20 minute set, (quickset compound)
- Crawford's vinyl spackling, (hole filler)
- Lighthouse, siliconized acrylic latex caulk, (NCS-40)

Capitol Extension:

All painting in the Capitol Extension will be done with latex paint. Caulk where needed, fill in holes, prime with finish paint, mask of cove base, cut in walls, and roll out paint.

Contractor shall use the following materials (supplied by SPB):

- Glidden Professional, LifeMaster No VOC, Interior Eggshell Base # 9300-0110 (Wall Paint)
- Crawfords vinyl spackling,
- Proform Quickset Lite 20 minute
- Lighthouse, siliconized acrylic latex caulk

Supplies:

SPB will supply the following items for use by the painting contractor: paint, tape, masking film, caulk, thinner to clean brushes, joint compound, spackling, primer, and grids. Contractor must supply the following items: brushes, roller frames, roller poles, caulk guns, putty knives, trash bags, drop clothes, ladders (6 to 28 feet), mud tools, flat bed cart to transport tools and material; along with any other hand tool that a painter would prefer to use. Drop cloths are required and must be clean of dust and debris.

BID FORM
State Preservation Board
Invitation For Bid #809-18-0227
Interior Painting Services

NAME OF FIRM _____

STREET ADDRESS _____

CITY/STATE/ZIP _____

VENDOR CONTACT _____

VENDOR TELEPHONE NO. _____

VENDOR CONTACT EMAIL ADDRESS _____

TEXAS VID NO. OR FEDERAL TAX ID NO. _____

Hourly Rates Bid - Please supply a rate for both regular time, overtime, and weekend (if different from overtime).

Painting Foreman: _____/per hour (regular time ____AM - ____PM); _____/per hour (overtime);
_____/per hour (weekend)

Journeyman Painter: _____/per hour (regular time ____AM - ____PM); _____/per hour (overtime);
_____/per hour (weekend)

Number of journeyman painters available for continuous 2 to 3 week time period : _____

BIDDER AGREES TO COMPLY WITH CONDITIONS OF THIS BID.

FAILURE TO MANUALLY SIGN WILL DISQUALIFY BID

AUTHORIZED SIGNATURE DATE

Submit the following documentation with your bid:

1. Work References from at least three (3) clients (from projects of comparable size and scope). Include business name, contact information, and brief description of project.
2. Insurance Certificate showing that the minimum insurance requirements can be met.
3. Staffing Information, including name and experience of foreman and painters to be assigned to this project.

TERMS AND CONDITIONS

Items below apply to and become part of the bid. Any exceptions thereto must be in writing.

1. BIDDING REQUIREMENTS:

- 1.1 Bidders must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
- 1.2 Bidders must price per unit shown. Unit prices shall govern in the event of extension errors.
- 1.3 Bids should be submitted on this IFB. Bids must be time stamped at the State Preservation Board (SPB) on or before the hour and date specified for the bid opening.
- 1.4 Late and/or unsigned bids will not be considered under any circumstances. Person signing the bid must have the authority to bind the firm in a contract.
- 1.5 Bid prices are requested to be firm for SPB acceptance for 30 days from bid opening date.
- 1.6 Bidder should enter Texas Identification Number System (TINS) number, full firm name and address of bidder on bid form.
- 1.7 Bid cannot be altered or amended after opening time. Alterations made before opening time should be initialed by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the SPB based on an acceptable written reason.
- 1.8 Purchases made for the SPB are exempt from the State Sales tax and Federal Excise tax. Do not include tax in bid. Excise Exemption Certification are available upon request.
- 1.9 The SPB reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the State.
- 1.10 The State will not be bound by any oral statement or representation contrary to the written specifications of this Invitation for Bids (IFB).
- 1.11 Any expenses for developing the bid are the responsibility of the Bidder and are not chargeable in any manner to the State Preservation Board. All materials which are submitted in response to this bid become the property of the State.
- 1.12 Bidder shall be responsible for acquainting themselves with the site conditions, approach to the buildings, and the facilities for delivering, placing, and handling of items and related materials and equipment.
- 1.13 If stated in the IFB, Bidders may email their bids to the following email address: SPB.Bids@tspb.texas.gov Bidder is responsible for confirming that bid arrived by the due date and time. The State shall not be responsible for failure of electronic equipment or operator error. Late, illegible, incomplete, or otherwise non-responsive bids will not be considered.

2. SPECIFICATIONS:

- 2.1 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.2 Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the bidder, on request, at bidder's expense. Each sample should be marked with bidder's name and address, and labeled with IFB name. Do not enclose in or attached bid to sample.

3. BID AWARD AND TIE BIDS - The SPB shall accept the lowest responsible Bidder that meets the specifications set forth in this IFB, and that possesses the ability to perform successfully under the terms and conditions specified in this IFB. The SPB may make such investigations as deemed necessary to determine the ability of a Bidder to meet the specifications or perform the work required by this IFB, and the Bidder shall furnish the SPB all such information and data for this purpose. The SPB reserves the right to reject any bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the SPB that such Bidder is properly qualified to carry out the obligations of the IFB and complete the work contemplated therein. In the case of a tie bid, awards will be made in accordance with rule 1 TAC Section 113.6 (b) (3) and 113.8 (preferences).

4. AWARD OF CONTRACT - A response to this IFB is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through a purchase order. Any changes to the purchase order must be agreed to in writing by both parties. The contract shall be governed, construed and interpreted under the laws of the State of Texas. A dispute arising under this contract is subject to Chapter 2260, Texas Government Code, and use of the dispute resolution process provided by that chapter is required by law. Any legal actions must be filed in Travis County, Texas.

5. FORMAL INVITATION FOR BIDS PROTEST PROCEDURES - Any actual or prospective bidder, offeror, or contractor who considers himself to have been aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the agency Executive Director. Such protests must be in writing and received in the care of the Executive Director within ten (10) working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. The protesting party must mail or deliver copies of the protest to the agency Executive Director and other interested parties. Interested parties is defined as all vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with the State Preservation Board. Formal protests must conform to the specified requirements and shall be resolved in accordance with the procedures set forth. In the event of a timely protest, the State Preservation Board shall not proceed further with the

solicitation or award of the contract unless the Executive Director makes a written determination that the contract must be awarded without delay, to protect the best interests of the state.

FORMAL PROTEST REQUIREMENTS:

A formal protest shall be addressed to the Executive Director and must be sworn and contain:

- (1) a specific identification of a statutory or regulatory provision that the protesting party alleges has been violated;
- (2) a specific description of each action that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified in number (1) above;
- (3) a precise statement of the relevant facts;
- (4) a statement of any issues of law or fact that the protesting party contends must be resolved;
- (5) a statement of the argument and authorities that the protesting party offers in support of the protest; and
- (6) a statement that copies of the protest have been mailed or delivered to all other identifiable interested parties.

If the protest is not resolved by mutual agreement, the Executive Director will issue a written determination that resolves the protest, as specified:

- (1) if the Executive Director determines that no violation of any statutory or regulatory provisions has occurred, he shall so inform the protesting party by letter which sets forth the reasons for the determination.
- (2) if the Executive Director determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, he shall so inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.
- (3) if the Executive Director determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the Executive Director shall inform the protesting party and other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.

A protest that is not filed timely shall not be considered unless good cause for delay is shown or the Executive Director determines that an appeal raises issues that are significant to agency procurement practices or procedures in general. A written decision by the Executive Director shall be the final administrative action.

- 6. PAYMENT** - Vendor shall submit an itemized payment application showing SPB purchase order reference number. Vendor shall note the dates of services covered by the payment application. The SPB will incur no penalty for late payment if payment is made in 30 or fewer days from the later of receipt of goods or services or an uncontested invoice. Payment shall be made in accordance with Chapter 2251, Gov't Code.
- 7. VENDOR ASSIGNMENTS** - Vendor hereby assigns to SPB any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967). Inquires pertaining to IFBs must give requisition number, codes, and opening date.
- 8. BIDDER AFFIRMATION** - Signing this bid with a false statement is a material breach of contract and shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists. By signature hereon affixed, the bidder hereby certifies that:
 - 8.1 The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.
 - 8.2 Pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq. neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation or institution has violated the antitrust laws of the State or the Federal Antitrust Laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
 - 8.3 Under Section 231.006(d), Family Code (relating to child support), the bidder certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
 - 8.4 All bidder employees will be in compliance with all requirements of the Immigration Reform and Control Act of 1986, Public Law 99-603, which became effective November 6, 1986.
 - 8.5 Under §2155.004, Gov't Code, the bidder certifies that the individual or business entity named in this bid or any contract resulting from this IFB is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate. §2155.004 prohibits a person or entity from receiving a state contract if they received compensation for participating in preparing the solicitation or specifications for the contract.
 - 8.6 By signing this bid, bidder certifies that if a Texas address is shown as the address of the bidder, bidder qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 1, Part 5, Chapter 111, Subchapter A, §111.2 (10).
 - 8.7 Bidder agrees that any payments due under this contract will be applied toward any debt, including but not limited to delinquent taxes and child support, that is owed to the State of Texas.

- 8.8 Pursuant to §669.003, Gov't Code, CPA may not enter into a contract with a person who employs a current or former executive head of the SPB until four years has passed since that person was the executive head of the SPB. By submitting a bid, the bidder certifies that it does not employ any person who was the executive head of the SPB in the past four years.
- 8.9 In accordance with §2155.4441, Gov't Code, bidder agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
- 8.10 Bidder certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that bidder is in compliance with the State of Texas statutes and rules relating to procurement and that bidder is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>
- 8.11 Sections 2155.006 and 2261.053, Gov't Code, prohibit state agencies from awarding contracts to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005. Under §2155.006, Gov't Code, bidder certifies that the individual or business entity named in its bid is not ineligible to receive a contract and acknowledges that any contract resulting from this IFB may be terminated and payment withheld if this certification is inaccurate.
- 8.12 Bidder represents and warrants that payment to the bidder and the bidder's receipt of appropriated or other funds under any contract resulting from this IFB are not prohibited by §556.005 or §556.008, Gov't Code, relating to the prohibition of using state funds for lobbying activities.
- 8.13 Bidder represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to SPB under the IFB and any resulting contract, if any, and that bidder's provision of the requested items under the IFB and any resulting contract, if any, would not reasonably create an appearance of impropriety. In its bid, Bidder must disclose any existing or potential conflict of interest that it might have in contracting with the State Preservation Board. The requirement to disclose any actual or potential conflict of interest will continue during the term of the contract. The SPB will decide, in its sole discretion, whether an actual or perceived conflict should result in bid disqualification or contract termination.
- 8.14 In addition to the disclosures required above, Bidder must also disclose any of its personnel who are current or former employees of the SPB or who are related, within the third degree by consanguinity (as defined by TX Govt Code §573.023) or within the second degree by affinity (as defined by TX Govt Code §573.025), to any current or former employees of the SPB.
- 8.15 Bidder certifies that it has not employed and will not employ a former SPB employee who participated in a procurement or contract negotiation for SPB involving bidder within two years after the employee left SPB employment. This certification only applies to former state employees whose state employment ceased on or after 9/1/15.
- 8.16 As required by Texas law, Vendor affirms that it (i) does not boycott Israel and (ii) will not boycott Israel during the term of the PO.
- 8.17 As required by Texas law, Contractor affirms that it is not engaged in active business operations with Sudan, Iran, or any foreign terrorist organization and/or organizations with policies that are anathema to the policy interests of the United States or the State of Texas.

9. INSURANCE AND INDEMNIFICATION

- 9.1 Insurance Requirements: Contractor shall procure and maintain at its expense during the term of the contract or any extensions thereof, insurance as listed below. Insurance shall be written by companies acceptable to the State Preservation Board and authorized to do business in the State of Texas. Policies shall include terms and provisions indicated below. The Contractor shall provide and furnish evidence of the following insurance:
- Workers Compensation & Employers Liability:
 - Workers Compensation: Statutory Limits
 - Employers Liability: Each Accident \$1,000,000
 - Disease- Each Employee \$1,000,000
- Contractor shall obtain and maintain in full force at all times during the term of this contract insurance coverage naming the State of Texas, acting through the State Preservation Board, as an additional insured and loss payee on its policies described below:
- Comprehensive General Liability in the minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence and a \$2,000,000 general aggregate.
 - Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence.
- 9.2 If insurance policies are not written for amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. Each policy of required insurance shall provide for ten (10) days written notice of cancellation to the State Preservation Board.
- 9.3 Required insurance must contain a waiver of subrogation against the State Preservation Board, its officers and employees, for bodily injury (including death), property damage or any other loss.

9.4 The Contractor shall, within ten business (10) days after award of bid, deliver to the SPB evidence of the required insurance. Failure on the part of the Contractor to furnish the evidence of required insurance within ten business (10) days of the contract award shall be just cause for cancellation of the award.

9.5 **BIDDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND SPB, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF BIDDER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF BIDDER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT WITH BIDDER RESULTING FROM THIS IFB. BIDDER SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY SPB. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE BIDDER TO INDEMNIFY OR HOLD HARMLESS THE STATE OR SPB FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF SPB OR ITS EMPLOYEES.**

9.6 PATENTS, TRADEMARKS, OR COPYRIGHTS - Bidder agrees to defend and indemnify the SPB and State from claims involving infringement or violation of patents, trademarks, copyrights, trade secrets, or other proprietary rights, arising out of the SPB's or the State's use of any good or service provided by the bidder as a result of this IFB..

10. CONTRACT ALTERATION AND TERMINATION

- 10.1 The contracting parties, if agreed, may amend this contract at any time during the contract's duration. To be effective, such amendments must be in writing and must be executed by the SPB and the Contractor. No agent, servant or employee of the SPB has the authority to modify this contract except by written amendment signed by the Executive Director.
- 10.2 The SPB may terminate the contract immediately for default by providing written notice to the Contractor of such termination if the Contractor fails to execute the work properly or performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of termination for default, the SPB shall have all remedies against the Contractor as provided by law.
- 10.3 The SPB may at its option and discretion terminate the Contract at any time, for any reason whatsoever, by giving a written notice to the Contractor at least thirty (30) days prior to the effective date of termination.
- 10.4 The Contractor may request termination of the Contract for a valid reason upon giving written notice of sixty (60) days to the SPB.

11. PUBLIC INFORMATION ACT Notwithstanding any provisions of this IFB to the contrary, bidder understands that SPB will comply with the Texas Public Information Act (Chapter 552, Gov't Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to the Texas Public Information Act. Within three (3) days of receipt, bidder will refer to SPB any third party requests, received directly by bidder, for information to which bidder has access as a result of or in the course of performance under any contract resulting from this IFB.

12. NOTE TO BIDDERS - Any terms and conditions attached to a bid will not be considered unless specifically referred to on this bid form. Warning: Such terms and conditions may result in disqualification of the bid. (e.g. bids with the laws of a State other than Texas, requirements for prepayment not defined in or allowed for in this IFB, limitation on remedies, etc.)

13. NON-APPROPRIATION OF FUNDS - Any contract resulting from this IFB is subject to termination or cancellation, without penalty to SPB, either in whole or in part, subject to the availability of state funds. SPB is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If SPB becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render SPB's or bidder's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, SPB will not be liable to bidder for any damages, which are caused or associated with such termination, or cancellation and SPB will not be required to give prior notice.

14. RIGHT TO AUDIT In addition to and without limitation on the other audit provisions of this IFB, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the bidder or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by the bidder or any other entity or person directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the bidder or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This IFB or any contract resulting from this IFB may be amended unilaterally by SPB to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. Bidder will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the bidder and the requirement to cooperate is included in any subcontract it awards.

15. FORCE MAJEURE - Neither bidder nor SPB shall be liable to the other for any delay in, or failure of, performance, of any requirement included in any contract resulting from this IFB caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of

transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

16. **INDEPENDENT CONTRACTOR** - Bidder is and shall remain an independent contractor in relationship to the SPB. The SPB shall not be responsible for withholding taxes from payments made under any contract resulting from this IFB. Bidder shall have no claim against the SPB for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
17. **MISCLASSIFICATION OF WORKERS:** Effective January 1, 2014, Texas Labor Code sec. 214.008 authorizes a penalty to be imposed on a person who contracts for certain services with a governmental entity and fails to properly classify their workers. This section applies to subcontractors directly retained and compensated by a person who contracts with a governmental entity